

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT PETITION NO : 1458 of 2005

Between:

D.Venkataramana Reddy, S/o.D.Narasimha Reddy,
R/o.10-3-178, 21/9, St.John's Road,
Secunderabad.

..... PETITIONER

AND

- 1 Debt Recovery Appellate Tribunal at Chennai, State of Tamil Nadu.
- 2 Debt Recovery Tribunal at Hyderabad.
- 3 Recovery officer, Debt Recovery Tribunal at Hyderabad.
- 4 State Bank of India, rep.by its Manager, R.A.R.Branch, 1-1-78, 1st

floor, R.P.Road, Secunderabad.

- 5 K.Subbamma @ K.Vimalamma, W/o.Sundararami Reddy,
Plot No.11, Ward No.16, Bit No.1, Rama Murthy Nagar,
Nellore.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ and quash the Judgment of the 1st respondent in M.A.No.69/2004 dated 18-11-2004 and restore that of the 2nd respondent in R.A.No.4/ 2004 in C.P.No.65/2003 in R.P.No.62/2003 in O.A.No.16/1996-Debt Recovery Tribunal, Hyderabad and declare that the auction sale of the subject property is illegal.

Counsel for the Petitioner:MR.V.VENKATARAMANA

Counsel for the Respondent Nos.1: MR.P.Rakesh (Addl.SC FOR CG)

Counsel for the Respondent Nos.2 and 3: Deepak Bhattacharjee

Counsel for the Respondent No.4: Mr.E.Madanmohan

Counsel for the Respondent No.5: None appeared.

The Court at the admission stage made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

Petitioner is not a party to O.A.No.16 of 1996 decided by the Debts Recovery Tribunal inter se the fourth and fifth respondents. During the recovery proceedings when property was sought to be attached and sold in execution, petitioner filed claim petition in C.P.No.65 of 2003 before the Recovery Officer. Recovery Officer by order dated 30-1-2004 dismissed the claim petition. Feeling aggrieved, petitioner preferred appeal against the order dated 30-1-2004 in R.A.No.4 of 2004 before the Debts Recovery Tribunal, Hyderabad. Debts Recovery Tribunal in its turn on 23rd March, 2004 allowed the said R.A.No.4 of 2004, order of Recovery Officer dated 30-1-2004 was set aside and consequently Recovery Officer was directed to withdraw the attachment and drop the sale proceedings for the property in question. Debts Recovery Tribunal proceeded to allow the claim petition and thereby set aside the order of the Recovery Officer on technical grounds without advertng to the objections, which had been raised by the petitioner herein or the case set up by the bank that property was liable to be attached and sold in recovery proceedings. Obviously, the Bank feeling aggrieved, preferred appeal before the Debts Recovery Appellate Tribunal at Chennai. On 18th November, 2004, Debts Recovery Appellate Tribunal allowed the appeal of the bank in M.A.No.69 of 2004. Not only the order of the Debts Recovery Tribunal was set aside but the appellate Tribunal even maintained the order of the Recovery Officer. Challenge in this writ petition is to the order of the Debts Recovery Appellate Tribunal.

We have heard the counsel for the parties.

The main grievance of the learned counsel for the petitioner is that by the order of the Debts Recovery Appellate Tribunal adjudicating the merits of the claim petition, the petitioner is deprived of one right of appeal. In case the appellate Tribunal was not satisfied with the order passed by the Debts Recovery Tribunal, the proper course to be adopted would be to set aside the said order and direct the

Debts Recovery Tribunal to hear and decide the appeal of the petitioner afresh in accordance with law.

Learned counsel for the fourth respondent vehemently opposed the writ petition on the ground that the appellate Tribunal rightly decided the matter and rightly came to the conclusion that the property was liable to be attached and sold and there is no force in the writ petition.

Having duly considered the submissions, we are of the view that the Appellate Tribunal on coming to the conclusion that the Debts Recovery Tribunal did not correctly decide the appeal and for that reason allowed the appeal on technical grounds, ought not to have ventured to go into the merits of the claim petition. It ought to have remanded the appeal for being decided in accordance with law. By not doing so, the petitioner is deprived of a statutory remedy of appeal in case ultimately the Debts Recovery Tribunal dismisses his appeal. Obviously, in a writ petition, we will not hear the parties on merits or the claims. Judicial review is not exercise of an appellate power. Therefore, the appellate Tribunal, in not having resorted to the aforesaid procedure, thus acted to the prejudice of the writ petitioner in disposing of the appeal as well as the claim petition on merits. Consequently, we allow the writ petition and set aside that part of the order passed by the appellate Tribunal by which claim petition of the petitioner has been dismissed and will maintain that part of the order by which the order of the Debts Recovery Tribunal has been set aside and we modify the said order with direction that on setting aside the order of the Debts Recovery Tribunal, the appeal of the petitioner before the said Tribunal will be heard and decided afresh by the Debts Recovery Tribunal in accordance with law. Till the appeal is heard and decided, confirmation of sale along with subsequent proceedings shall remain stayed. Parties to appear before the Tribunal on 14-3-2005.

DEVINDER GUPTA, CJ

8-2-2005

M.NARAYANA REDDY, J

Tvr

To

- 1 Debt Recovery Appellate Tribunal at Chennai, State of Tamil Nadu.
- 2 Debt Recovery Tribunal at Hyderabad.
- 3 Recovery officer, Debt Recovery Tribunal at Hyderabad.
- 4 The Manager, State Bank of India, R.A.R.Branch, 1-1-78, 1st floor, R.P.Road,Secunderabad.
5. 2 CD copies.